

## **FOI/16/00690 REQUEST UNDER THE ENVIRONMENTAL INFORMATION (SCOTLAND) REGULATIONS 2004 (EIRs)**

### Your request

On 4 May 2016, you asked for information concerning mediation/facilitation of discussions on planning application reference APP/2015/3663, Land at Braehead, Auchattie, Banchory, Aberdeenshire.

As the information you have requested is 'environmental information' for the purposes of the Environmental Information (Scotland) Regulations 2004 (EIRs), we are required to deal with your request under those Regulations. We are applying the exemption at section 39(2) of the Freedom of Information (Scotland) Act 2002 (FOISA), so that we do not also have to deal with your request under FOISA.

This exemption is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption, because there is no public interest in dealing with the same request under two different regimes. This is essentially a technical point and has no material effect on the outcome of your request.

The Scottish Government does not have some of the information you have requested. Under the terms of the exception at regulation 10(4)(a) of the EIRs (information not held), the Scottish Government is not required to provide information which it does not have. This exception is subject to the 'public interest test'. Therefore taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exception. We have found that, on balance, the public interest lies in favour of upholding the exception. While we recognise that there may be some public interest in information about brokerage/mediation, clearly we cannot provide information which we do not hold.

Response to your request

### The answers to your questions are:

Question 1. Was contact made by Ryden LLP, Sandlaw Farming Company, Ross Developments & Renewables Ltd, or any other organisation or individual with the Scottish Government Planning and Architecture Division or any Scottish Government Minister, concerning mediation/facilitation of discussions on the above application at any time prior to Thursday 28th April?

Answer 1. Ross Developments made contact with Planning & Architecture Division (PAD) on 9 and 14 March 2016. We have no record of any of the other organisations making contact with PAD on this subject.

Question 2. What reasons were given for the request to mediate/facilitate discussion?

Answer 2. Potential of proposed development to deliver housing for rent. Potential for development that contributes towards sustainable development.

Question 3. On what date/dates did a member/members of the Scottish Government Planning and Architecture Division make contact with Aberdeenshire Council's Head of Planning and Building Standards, Robert Gray, concerning mediation/facilitation on the above planning application?

Answer 3. The Principal Planner, contacted Robert Gray by phone on Monday 18 April; The Assistant Chief Planner contacted Robert Gray by phone on Friday 22nd April.

Question 4. Which member(s) of the Scottish Government Planning and Architecture Division made contact with Aberdeenshire Council's Head of Planning and Building Standards, Robert Gray, concerning mediation on the above planning application?

Answer 4. As above.

Question 5. Was the Scottish Government Chief Planner, John McNairney, aware of the decision to contact Robert Gray concerning mediation/facilitation on the application?

Answer 5. The Chief Planner was aware.

Question 6. Was contact made by Alex Neil MSP, Cabinet Secretary for Social Justice, Communities and Pensioners' Rights, any member of his office, or any other Scottish Minister, to the Scottish Government Planning and Architecture Division concerning the decision to contact Robert Gray regarding the offer of mediation/facilitation on the above planning application?

Answer 6. We have no record of any contact being made by Scottish Ministers with PAD in relation to the offer of mediation/facilitation on the above planning application.

Question 7. If contact was made by Alex Neil, any member of his office, or any other Scottish Minister, what was their justification for doing so?

Answer 7. N/A.

Question 8. On what grounds did the Scottish Government's Planning and Architecture Division officers make the offer of mediation/facilitation?

Answer 8. As part of the Scottish Government's work on modernising the planning system, the Government Economic Strategy (2011) committed to an ongoing brokerage role for the Chief Planner, along with other measures including introducing an initiative to help unlock development which has stalled due to infrastructure needs. Scotland's current Economic Strategy, published March 2015, reflects the Government's focus on effective development planning, and more efficient decision making, including seeking solutions where development has stalled. The Chief

Planner's brokerage role is intended to support performance of the planning system, particularly for major developments, and those which involve government agencies as statutory consultees in the planning process. Scottish Government Planning and Architecture Division (PAD) maintains a role in relation to a number of developments and policy issues. This commonly takes the form of offering to facilitate discussions to enable consideration of an application to move forward, and can range from telephone discussions with relevant local government colleagues to more formal meetings. In any planning brokerage activity, PAD respects the statutory roles that parties may also have in the system, including the potential role of Scottish Ministers as part of the decision making process. The Chief Planner and PAD colleagues only take on a brokerage role where parties are agreeable to that. In this case there was no brokerage or wider discussion with parties.

Question 9. How many times have offers of mediation/facilitation been made by the Scottish Government's Planning and Architecture Division to Local Authorities for applications for Planning Permission in Principle in each of the last five years, excluding any mediation undertaken as part of the Government's mediation pilot project?

Answer 9. See below.

Question 10. How many times have offers of mediation/facilitation been made by the Scottish Government's Planning and Architecture Division to Local Authorities for applications for Planning Permission in in the period from January 1st 2016 - April 25th 2016 with application reference numbers given?

Answer 10. The Chief Planner receives a diverse range of requests in the course of any year, some of which may lead to PAD taking a mediation or brokerage role. The detailed information requested is not held.

In relation to questions 6, 9 and 10, under the terms of the exception at regulation 10(4)(a) of the EIRs (information not held), the Scottish Government is not required to provide information which it does not have. In relation to questions 6, 9 and 10, the Scottish Government does not have the information you have requested because the information you have requested is not recorded. This exception is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exception. We have found that, on balance, the public interest lies in favour of upholding the exception. While we recognise that there may be some public interest in information about planning applications, clearly we cannot provide information which we do not hold.

#### Your right to request a review

If you are unhappy with this response to your EIRs request, you may ask us to carry out an internal review of the response, by writing to Kenneth Hogg, Director for Local Government and Communities, Scottish Government, [Kenneth.Hogg@gov.scot](mailto:Kenneth.Hogg@gov.scot)

Your review request should explain why you are dissatisfied with this response, and should be made within 40 working days from the date when you received this letter.

We will complete the review and tell you the result, within 20 working days from the date when we receive your review request.

If you are not satisfied with the result of the review, you then have the right to appeal to the Scottish Information Commissioner. More detailed information on your rights is available on the Commissioner's website at: [www.itspublicknowledge.info](http://www.itspublicknowledge.info)